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OFFICE OF PETITIONS

In re Application of :
Huang, et al. :
Application No. 10/643,112 : ON PETITION
Filed: August 15, 2003 :
Attorney Docket No. UCIP380 :
:

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 7, 2005, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

This application became abandoned for failure to timely reply within three months to the Office action mailed May 12, 2004. Accordingly, this application became abandoned on August 13, 2004. A Notice of Abandonment was mailed on November 17, 2004.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

The required reply has not been submitted. As such, the petition must be dismissed.

It is noted that petitioner states, "The Applicant has not received the Office Action of May 12, 2004 mentioned in the Notice of Abandonment. That is why the Applicant failed to file a reply. Applicant hereby requests the patent office send a copy of the Office Action of May 12, 2004 to the address specified in the attached Supplemental Declaration and Power of Attorney, so that a reply can be prepared."

If petitioner wishes to assert non-receipt of an Office action, petitioner should submit a petition under 37 CFR 1.181 to withdraw the holding of abandonment. No fee is required with a petition under 37 CFR 1.181. A petition under 37 CFR 1.181 to withdraw the holding of abandonment should be submitted to Technology Center 3700 and not the Office of Petitions.

Furthermore, please note, the showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See Withdrawing the Holding of Abandonment When Office Actions Are Not Received; Notice 1156 Off. Gaz. Pat. Office 53 (November 16, 1993).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at (571) 272-3228.



Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

Attachments:
May 12, 2004 Office Action